

1 do, we do through the television station."

2 MR. LEADER: I'm going to object. You're comparing  
3 apples and oranges here.

4 JUDGE SIPPEL: Well, let the witness -- let the  
5 witness handle this. His statement in the deposition, as I'm  
6 reading it now -- of course, for the first time -- is do you  
7 have any interest in civics and the question is certainly  
8 right on line with what's in his testimony.

9 BY MR. GREENEBAUM:

10 Q And do you recall your answer?

11 "A Nothing specific. Most everything we  
12 do, we do through the television station."

13 A That's correct.

14 Q And then I asked you,

15 "Q I'm not asking you about things you did  
16 by writing a check or by having someone  
17 else write a check. I'm trying to find  
18 out what it is that you have an interest  
19 in or don't have an interest in to which  
20 you give your time, whether it's on your  
21 own, through the family, through your  
22 station, or whatever.

23 MR. LEADER: Of a civic nature.

24 BY MR. GREENEBAUM:

25 Q Of a civic or charitable or community

1 related."

2 And you gave this answer,

3 "A Well, I spend time involved in  
4 discussions and general planning that may  
5 revolve around issues as to what type of  
6 campaigns we wish to be involved in, what  
7 are the reasons we wish to be involved in  
8 that type of thing.

9 Q Those are business decisions you make at  
10 the station?

11 A I don't really view them necessarily as  
12 business decisions because they don't  
13 necessarily involve the sale of inventory  
14 which is the primary business we are in  
15 aside from serving the public.

16 Q Are they decisions you make in your office  
17 during the course of your regular working  
18 day?

19 A Not necessarily.

20 Q When would you make them?

21 A I might make them out at a function some  
22 place.

23 Q What kind of function do you attend that  
24 would require you to make those decisions  
25 from time to time?

1 A Nothing specific."

2 Do you recall giving those questions and answers as  
3 your civic --

4 A Yes.

5 Q -- involvement?

6 A Yes.

7 Q And they were accurate at the time?

8 A Yes.

9 Q And still accurate today?

10 A Yes.

11 MR. GREENEBAUM: We have no further questions of  
12 this witness at this point.

13 JUDGE SIPPEL: Will there be any redirect?

14 MR. LEADER: I have no further questions. No  
15 direct.

16 JUDGE SIPPEL: Nothing on redirect? Very well.  
17 Then you're excused as a witness. I'd ask you not to discuss  
18 your testimony with the other Four Jacks' witnesses until your  
19 case is completed. Do you understand that?

20 MR. D. SMITH: Yes, Your Honor.

21 JUDGE SIPPEL: Do we have another witness?

22 MR. LEADER: Yes, sir.

23 MR. GREENEBAUM: Can I ask the Court to indulge me  
24 for a moment? I'm going to be even shorter with this next  
25 witness and I need about five minutes just to set up some

1 papers.

2 JUDGE SIPPEL: Sure. Let's go off the record for --  
3 we'll come back in -- at quarter of two by the clock in the  
4 back of the room.

5 (Off the record at 1:35 p.m. to reconvene at 11:47  
6 p.m.)

7 JUDGE SIPPEL: We're on the record. You have  
8 another witness?

9 MR. LEADER: Yes, Your Honor. We have Mr. Robert  
10 Smith and I'd like to call him as a witness.

11 JUDGE SIPPEL: Please come forward.  
12 (Whereupon,

13 ROBERT EDWARD CUNNINGHAM SMITH  
14 having first been duly sworn, was called as a witness herein  
15 and was examined and testified as follows:)

16 JUDGE SIPPEL: Please be seated. I need you to  
17 state your full name first and your present residence address.

18 MR. R. SMITH: Robert Edward Cunningham Smith. My  
19 address is 2070 Geist Road in Glyndon, Maryland, 21071.

20 JUDGE SIPPEL: Thank you. Mr. Leader?

21 DIRECT EXAMINATION

22 BY MR. LEADER:

23 Q Mr. Smith, I'd like to show you Page Six of your  
24 testimony and ask if there are any changes you'd like to make  
25 to it.

1           A       The only change would be the percentage of my  
2 ownership in Bay TV is incorrect. It should be 18.75 percent  
3 as opposed to 19.8.

4 Q Any other corrections?

5 A No .

6 MR. LEADER: Thank you. Your Honor, he's available  
7 for cross examination.

8 JUDGE SIPPEL: Thank you, Mr. Leader. Mr.  
9 Greenebaum?

10 CROSS EXAMINATION

11 BY MR. GREENEBAUM:

12 Q Mr. Smith, I understand you were born in 1963.

13                    A        Yes.

14 Q Are you 30 or 31 at the --

15 A The air just came on. I can hardly hear you.

16 Q That's all right. I'll raise my hands if I say  
17 anything important.

18 JUDGE SIPPEL: Let's try and proceed in the normal.

19 BY MR. GREENEBAUM:

20 Q You were born in 1963?

21 A That's correct.

22 Q And are you 30 or 31 at the present time?

23                      A                      30.

24 Q And you graduated from Roanoke College in Salem,  
25 Virginia in 1986.

1           A     Correct.

2           Q     And you were there from 1981 to 1986.

3           A     Correct.

4           Q     And you got a degree in psychology.

5           A     Correct.

6           Q     Now, in your direct examination, on Page Four -- do  
7 you have that in front of you? If not, I'll give it to you.  
8 At the top, first paragraph, halfway down, I believe you say  
9 there, "My brothers and I have been greatly involved in the  
10 Baltimore community through our operation of Baltimore station  
11 WBFF(TV)." Is that correct?

12          A     That's correct.

13          Q     And you use the word "greatly" as a word of  
14 emphasis?

15          A     You're asking if I would use the word "greatly"?

16          Q     As a word of emphasis.

17          A     Through the station, greatly involved in Baltimore  
18 community through the operation of our Baltimore station, yes.

19          Q     But it says you are greatly involved through the  
20 station. Is that correct?

21          A     It says through our operation. That's correct.

22          Q     Well, are you involved greatly?

23          A     Through our operation.

24          Q     Do you recall when I took your deposition, on Page  
25 55, Line Nine, I asked you these questions and you gave these

1 | answers? Page 55, Line Nine, Your Honor.

2 | "Q Do you have any civic organizations in

3 | which you participate with any degree of

4 | regularity?

5 | A With any degree of regularity?

6 | Q Um-hmm.

7 | A Negative."

8 | Do you recall that question, that answer?

9 | A Yes.

10 | Q And then the next question is,

11 | "Q How about civic organizations of which you

12 | are a member, but don't participate

13 | regularly?"

14 | And you gave this answer,

15 | "A I would say the closest I would come to

16 | that was this year, I was asked to be on

17 | the board of the Cystic Fibrosis

18 | Foundation.

19 | Q Did you do that?

20 | A No, I did not."

21 | Do you recall those questions and that answer?

22 | A Uh-huh. Yes.

23 | Q Was it true and accurate at the time?

24 | A Yes.

25 | Q And then I asked you on Line 21,

1 "Q Any other organizations like that that  
2 have asked you to join?"

3 And Line One on Page 56, your answer is no. Do you  
4 see that?

5 A Uh-huh.

6 Q And on Two,

7 "Q Do you have any participation in  
8 charitable, civic, or organizations of  
9 that type that you have spent time with  
10 even though you may not be a member?

11 A Well, we have all the stuff at the station  
12 that we are into such as MESA and, like I  
13 said, the cystic fibrosis. Even though I  
14 wasn't on the board, I did involve the  
15 station very indepthly in that."

16 Do you recall that question and answer?

17 A Yes.

18 Q And then this question on Line Ten,

19 "Q In what way did you participate?

20 A I participated by becoming the liaison  
21 from the person who wanted me to do it who  
22 was one of my tennis instructors who's  
23 also an honorary board member.

24 Q Who is that?

25 A Steve Krulavitz. He asked me to do it and

1 I discussed it with him and tried to figure  
2 out what they were going to do. And it  
3 seemed to me that instead of them having me,  
4 it would be more advantageous for the  
5 foundation to have a face, if you will, and  
6 that face was our co-anchor on the news,  
7 Lisa Willis. So I discussed it with Lisa  
8 and she agreed to be their spokesperson and  
9 launch their walk, mini walk-a-thon for  
10 cystic fibrosis. And I coordinated Steve  
11 and Lisa and they cut public service  
12 announcements and the rest is history."

13 Do you recall that?

14 A Yes.

15 Q And then on Line Seven, "It started on -- "

16 Question, "What did that conver--" I'm sorry, Line Five,

17 "Q When did that conversation take place that  
18 started that --

19 A It started on the tennis court and it  
20 ended, I guess, in May was when the walk-a-  
21 thon was.

22 Q I was sort of looking for a time frame.

23 A When did Steve first approach me?

24 Q Yes.

25 A That was during the winter, indoor season.

1                   That was probably November or December of  
2                   last year.

3           Q     '92?

4           A     Um-hmm."

5                   Is that correct that that happened in 1992?

6           A     Yeah, I believe that is correct.

7           Q     So that was after this proceeding started. Is that  
8 correct?

9           A     After --

10          Q     Your challenge to the Channel Two renewal  
11 application of Scripps Howard.

12          A     Well -- yeah, I would say that's correct.

13          Q     Now, then you're asked this question,

14          "Q     What has been your involvement with MESA?

15          A     MESA, Fred, when he -- I think it was when  
16 he first started working at the station,  
17 wanted to do something in my father's name  
18 because my father was an engineer and  
19 through Hopkins -- and they put the program  
20 together.

21          Q     I'm only asking what your involvement was.

22          A     My involvement was to approve that we do  
23 it.

24          Q     How did you do that?

25          A     Fred asked me do I want to do it and I

1                   said, 'Yeah, I want to do it.'

2                   Q     So you went along with his idea or some-

3                   body else's idea.

4                   A     Whoever's idea it was, yeah.

5                   Q     I take it that something honoring your

6                   father really didn't require any

7                   discussion.

8                   A     Anytime you want to give money away

9                   requires discussion. But in general --

10                  Q     How long was the discussion before you

11                  approved?

12                  A     I don't remember.

13                  Q     Minutes?

14                  A     I don't remember.

15                  Q     No idea?

16                  A     No.

17                  Q     Did you discuss it with anyone other than

18                  Fred?

19                  A     I don't remember."

20                  Do you recall those questions and answers?

21                  A     Yes.

22                  Q     Now, that's the Julian Smith Memorial Scholarship or

23 something like that?

24                  A     Uh-huh.

25                  JUDGE SIPPEL: You have to answer -- you have to

1 articulate your answer.

2 MR. R. SMITH: Yes.

3 Q And I take it being a memorial scholarship, it was  
4 named after your father died?

5 A It was named after he died?

6 Q Yeah. If it was a memorial to him, was it after he  
7 died?

8 A Well, I don't -- to tell you the truth, I don't how  
9 the time frame went. It seems that --

10 JUDGE SIPPEL: Well, what date did your father die?

11 MR. R. SMITH: He died in April of this year, April  
12 19th.

13 JUDGE SIPPEL: Of '93?

14 MR. R. SMITH: That's correct.

15 BY MR. GREENEBAUM:

16 Q If you look at your direct, the seventh line down,  
17 third paragraph on Page Four, it says, "These scholarships are  
18 named the Julian Sinclair Smith Memorial Scholarships in honor  
19 of my late father's devotion to technical engineering  
20 excellence." So I'm only probing if the fact that it's a  
21 memorial scholarship, that it was created after his death.

22 A Well, I presume that it was.

23 Q Thank you. And when did your father die for the  
24 record?

25 A April 19th.

1 Q '93.

2 A Right.

3 Q Now, when had you begun working in broadcasting in  
4 any respect, Mr. Smith?

5 A In any respects, when I was a young boy, probably  
6 ten or eleven years old.

7 Q And that's when you began accompanying your father  
8 to WFMM?

9 A That's correct.

10 Q And what was it that you did on those occasions when  
11 you accompanied him --

12 A I used to --

13 Q -- at age ten or eleven?

14 A Pardon me?

15 Q At age ten or eleven.

16 A I would go to the radio station, which was downtown,  
17 and help with tapes, loading tapes onto tape machines which  
18 were commercials or public service announcements, helped the  
19 disk jockeys, stuff like that, hanging around as a young boy  
20 would do, trying to learn what's going on, being inquisitive.

21 Q On Page Five of your direct (sic), Line Ten, I asked  
22 you,

23 "Q When had you begun working in broadcasting  
24 in any respect?"

25 Page Five, Line Ten, Your Honor.

1           "A     In any respect, I guess you could say --  
2                     you can say when I was ten or eleven, my  
3                     father had a radio station, the call  
4                     letters were WFMM, and I used to go in  
5                     there in my spare time and spin records  
6                     and load tape machines and help out the  
7                     disk jockeys, whatever they needed help  
8                     on."

9                     Were you doing that at age ten?

10          A     Was I doing that at age ten?

11          Q     Yes, sir.

12          A     I was hanging around the radio station doing  
13 whatever I could do.

14          Q     Were you spinning records at age ten on the air?

15          A     On the air?

16          Q     Yes, sir.

17          A     I wouldn't spin them on the air. My recollection is  
18 the guy who was on duty there, who was like the disk jockey,  
19 if you will, would sit there with me and guide me through the  
20 process and he would check and make sure everything was the  
21 way it was supposed to be.

22          Q     You had actually been going down there when you were  
23 six or seven years old, hadn't you?

24          A     Pardon me?

25          Q     Had you been going down to Biddle Street when you

1 were six or seven years old?

2 A I was going down there a long time ago.

3 Q You were following your dad around. You were  
4 tagging along, weren't you?

5 A Yes.

6 Q Do you recall when Fred first became involved in the  
7 radio station?

8 A Not specifically, no.

9 Q Was he ever a full-time employee of the radio  
10 stations?

11 A Fred, I don't think so.

12 JUDGE SIPPEL: You're referring to his brother, Fred  
13 Smith?

14 MR. GREENEBAUM: Yes, Your Honor.

15 BY MR. GREENEBAUM:

16 Q Do you recall when your brother, Duncan, first  
17 became involved with the radio station?

18 MR. LEADER: It's irrelevant. Objection. He's not  
19 an integrated principle.

20 MR. GREENEBAUM: I agree with that. I'll withdraw  
21 that question, Your Honor.

22 BY MR. GREENEBAUM:

23 Q And when you worked at the radio station, that  
24 wasn't a regular job with a schedule when you were ten or  
25 eleven years old, was it?

1           A     Of course not.

2           Q     Just whenever you could get down there.

3           A     Uh-huh.

4                 JUDGE SIPPEL: You have to articulate your answer.

5                 MR. R. SMITH: Yes.

6                 BY MR. GREENEBAUM:

7           Q     Your father eventually acquired or built a

8 television business. Isn't that correct?

9           A     It's correct.

10          Q     And how old were you at that time?

11          A     That was in '70, '71, so eleven, twelve.

12          Q     And what were you doing -- and the television

13 station was in the same location as the radio station, wasn't

14 it?

15          A     When the TV station came on the air, it was in the

16 same building, that's correct, as the radio station. So there

17 was some overlap there.

18          Q     And what were you doing at the TV station at that

19 time frame?

20          A     I would go in, just like with the radio station. I

21 would go in and just sort of be inquisitive and learn whatever

22 I could to find out what these guys were doing. I learned how

23 to load tape machines, film projectors, run camera, things of

24 that nature. Basic tasks.

25          Q     On camera?

1 A Run a camera. That's correct.

2 Q I'm sorry. I can't --

3 A Camera.

4 MS. SCHMELTZER: Run a camera.

5 MR. R. SMITH: Run a camera. Operate a camera.

6 BY MR. GREENEBAUM:

7 Q Were you running the on-air operation at any time  
8 under any circumstances?

9 A That was -- I think I clarified that in my  
10 deposition. It was more of me sitting there with guys who  
11 were doing the button-pushing and really learn what they were  
12 doing. It was kind of just, as everything else, just sitting  
13 there, watching and learning, maybe pushing a button when a  
14 guy would tell me to push it, something like that. But not  
15 full-time on air by any means.

16 Q Mr. Smith, let me refer you to Page 42 of your  
17 deposition, Line 19, and I will read as much of that answer,  
18 in fairness to you, as you would like for me to. But I only  
19 want to call your attention to the -- for transition, to the  
20 bottom of Page 42 which is your answer to a pending question.

21 "A Okay, I'll pick up there then. All  
22 through my youth, after the radio  
23 station was sold and my father went  
24 into the television business, I, during  
25 school nights, would spend one or two

1                   nights at the station working on the  
2                   technical side loading film projectors,  
3                   tape machines, camera, running the on-  
4                   air operation. That was a couple nights  
5                   a week when I was in grade school."

6                   And you can look at the rest or I'll read it. I  
7                   don't want to burden the record. But do you see anywhere  
8                   where you cleared up the suggestion that you were running the  
9                   on-air operations?

10                  MR. LEADER: Maybe we should keep reading.

11                  JUDGE SIPPEL: Well, the witness can read the rest  
12                  of that section to himself and you tell us when you're ready  
13                  to answer the question.

14                  BY MR. GREENEBAUM:

15                  Q     Mr. Smith, in fairness, let me direct your attention  
16                  --

17                  A     I found it. On 45, I think, is what I'm looking  
18                  for.

19                  Q     Line Two?

20                  A     It starts around Number Seven,

21                  "A     No, you misheard -- no, I did not  
22                          misspeak and you did not mishear. What  
23                          that amounted to is punching the buttons  
24                          that required -- that turned the tape  
25                          machines on, that put the signal ... over

1 the air. I was really just learning that.

2 I never did that as my thing."

3 Which is what I was trying to say before. It was  
4 just a matter of me sitting next to you, if you will, and you  
5 would say, "Okay, push that button," and I would push that  
6 button.

7 Q And this was when you were in the fifth or sixth --  
8 fifth, sixth, seventh, and eighth grades. Is that correct?

9 A Approximately.

10 Q That's on Page 44 if you want to check it. And  
11 you'd go over -- what time did you get off from school?

12 A 3:30, 4:00, something like that.

13 Q And how did you get over to the station?

14 A I would come back after dinner, which was around  
15 6:00, with my father.

16 Q So you'd go home and then go to the station.

17 A Right. He would come back.

18 Q How long would you stay there at the station  
19 routinely?

20 A He would come back for a couple of hours. 8:00,  
21 8:30.

22 Q Now, you also indicate on Page Three under your  
23 broadcast experience --

24 JUDGE SIPPEL: Where are you now, Mr. Greenebaum?  
25 Back to his --

1 MR. GREENEBAUM: Direct testimony, Page Three, Your  
2 Honor.

3 JUDGE SIPPEL: -- direct exhibit.

4 MR. GREENEBAUM: The last sentence of the first  
5 paragraph on Page Three, entitled Paragraph Number Two,  
6 Broadcast Experience.

7 BY MR. GREENEBAUM:

8 Q Are you with me?

9 A Page Three, at the bottom of the page?

10 Q Page Three, at the top of the page.

11 A Top of the page, okay.

12 Q It starts with, "My broadcast experience began..."

13 A Uh-huh.

14 Q Look at the last sentence of that paragraph, "During  
15 one summer break during college, I worked for my brother,  
16 David, at his company, Comark Communications, Inc. installing  
17 television transmitters at new stations." Do you see that?

18 A Uh-huh. Yes.

19 Q How many television transmitters did you install  
20 that summer?

21 A There was one in Tampa. There was one in upstate  
22 New York. I think we did a little bit of time in another  
23 market in Florida.

24 Q How long does it take to put up a television -- I  
25 take it that's a television transmitter? Yes.

1 A That's right.

2 Q To put up a television transmitter at a new station.

3 A It could take anywhere from two weeks to a month.

4 Q That's one of those big things that goes way up over  
5 the station?

6 A No, you're referring to the tower. What I'm  
7 referring to is the transmitter equipment and the plumbing and  
8 all the stuff that's basically a jigsaw puzzle.

9 Q And do you recall where you worked that summer to do  
10 that?

11 A Well, I mentioned upstate New York. I do not  
12 remember the market. I believe there was one in Tampa and  
13 there was another one in Florida, also, but I can't remember  
14 the market.

15 Q So your best recollection is that you installed  
16 three transmitters during that period?

17 A That's correct.

18 Q Could it have been more?

19 A Could it have been more?

20 Q Yeah.

21 A I don't recollect anymore.

22 Q And was your brother working with you at those  
23 sites?

24 A My brother, Duncan, and I.

25 Q Well, this says you were working with your brother,

1 David.

2 A Well, he owned the company.

3 Q So when you say, "During one summer break during  
4 college, I worked for my brother, David, at his company..."

5 A He would also, as the chief honcho at that company,  
6 make the rounds at the sites where we were doing  
7 installations. He has a very intense, technical background,  
8 so he wanted to be present on all the sites as we were doing  
9 the legwork, if you will, to make sure things were going as  
10 planned. So, yes, he was there.

11 Q I don't mean to be obtuse, but your brother, David,  
12 was working with you at each place where you mentioned.

13 A Duncan and I spent two to three to four weeks,  
14 whatever it took, on a job together and Dave would come in. I  
15 remember him particularly at the Tampa station down there,  
16 checking things out.

17 Q Do you mean to say you worked with your brother,  
18 Duncan, for your brother, David? Is that what you're saying?

19 A Run that by me again.

20 Q Are you saying that you worked with your brother,  
21 Duncan, but for your brother, David, as your boss?

22 A Well, I worked with both of them, but we both worked  
23 for Dave.

24 Q But there's no mention of Duncan here, is there, in  
25 your direct?

1           A     I haven't read it recently. I don't know if there  
2 is or isn't. No, I don't think there is.

3           Q     And on Page 43 of your deposition, you suggest that  
4 you were also working in Ohio. Do you recall that?

5           A     That would've been our station. Yeah, I'm not sure  
6 if that was at the same time or not. I don't really remember.

7           Q     So you're really not sure.

8           A     Well, let me read it. Maybe it will refresh my  
9 memory. '84 was when Columbus went on the air, so '83, I was  
10 a sophomore in college. That's when we did Columbus. So that  
11 was probably part of the whole summer.

12          Q     And when did you first obtain a job that required  
13 executive ability or capacity?

14          A     That would've been when I graduated from college. I  
15 went to our Pittsburgh station, WPTT --

16          Q     That would be in 1986?

17          A     That would be in 1986. That's correct.

18          Q     And what did you --

19          A     And -- pardon me?

20          Q     And what did you do in Pittsburgh?

21          A     I went up there to learn and ascertain the operation  
22 of the programming side of that station.

23          Q     And what job was it that you were given or obtained  
24 at that time? Was it program manager in Pittsburgh?

25          A     No, that was where I went for training, if you will.

1 I went up there and learned the operation and then came back  
2 and was the program manager at Baltimore after that.

3 Q Isn't it fair to say that you graduated from college  
4 and you went to work in Baltimore, you were given the job as  
5 program manager in Baltimore, but they sent you to Pittsburgh  
6 to learn that job for a week before you took over in  
7 Baltimore?

8 A That's correct.

9 Q And as a matter of fact, your testimony was, "When I  
10 first became program manager, I went to our Pittsburgh  
11 station, 'to learn the task,' if you will." Isn't that  
12 correct?

13 A Right.

14 Q And then you came back to Baltimore, implementing  
15 what you had learned in Pittsburgh because of inefficiencies  
16 in Baltimore that needed to be cleaned up. Isn't that right?

17 A That's correct.

18 Q And you learned all that in one week in Pittsburgh.

19 A There wasn't a whole lot to it.

20 Q And that included implementing some of the computer  
21 things that you learned about, "... organizing the material  
22 and the information with the films and the programming in  
23 Baltimore and at that time, I guess you would say, economics  
24 of scale and tried to mirror the operation from Pittsburgh to  
25 Baltimore..." Is that right?

1 A Yes.

2 Q So that for about a year and a half, you tried to  
3 make Baltimore a mirror-image of what you had seen in  
4 Pittsburgh. Is that correct?

5 A In terms of the operation, that's correct.  
6 Programming and operation.

7 Q And about three years ago, you went to Pittsburgh.  
8 Is that correct?

9 A Three years ago?

10 Q Uh-huh.

11 A That's correct.

12 Q And what was your job in Pittsburgh?

13 A We were going through some management changes up  
14 there and in the interim, my brother, David, and myself acted  
15 as interim general manager.

16 Q You all alternated as the general manager?

17 A That's correct.

18 Q Was that a formal title or were you all just holding  
19 the fort until a general manager could be appointed?

20 A Well, you could say we were holding the fort, but if  
21 somebody had to ask the number one guy in the station a  
22 question or needed direction, they would come to us.

23 Q You would kind of alternate going up there from week  
24 to week.

25 A Yeah. It only lasted for about six weeks. Four